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(1928-2017)

May 1, 2019

Via Electronic Filing

Honorable Daniel J. Stewart
United States Magistrate Judge
James T. Foley U.S. Courthouse
445 Broadway, Room 409
Albany, New York 12207

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**Re: People v. Adrian Thomas and Thomas v. City of Troy
Civil Action No.: 1:17-cv-626 (GTS/DJS)**

Dear Magistrate Stewart:

I am in receipt of the letter of April 29, 2017 from Assistant District Attorney Jacob Sher. Since I have never seen the writings to which the privilege of attorneys work product is being claimed, it is difficult for me to respond to the contentions raised by Assistant District Attorney Sher.

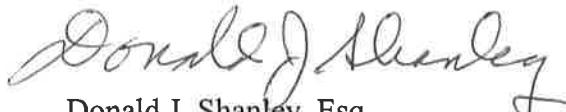
I have no quarrel with the authority cited in the Sher letter. However, I would point out one factor here present which could well distinguish these authorities and that is the fact that in the case at bar, there is no litigation pending or contemplated. The People v. Thomas, criminal proceedings ended in the spring of 2014, some five years ago. Crosby v. City of New York, 209 F.R.D. 267 (S.D.N.Y. 2010), cited by Assistant District Attorney Sher, speaks in terms of “preventing opponents” from free loading off their “adversaries” work. Here however, there is no opponent involved, nor any adversary situation because there is no litigation involved. I would urge, and strenuously so, that the currently sitting District Attorney is not a party to this action. Her only involvement is that she is merely the possessor of the records sought. These three police officer defendants have need of these records in order to defend themselves in this action. In the absence of pending or contemplated litigation, the District Attorney has no involvement herein and I suggest that Assistant District Attorney Sher is attempting to assert some abstract principle of law.

Balancing the equities, Your Honor’s discretion should be exercised in permitting the discovery sought by the defendants.

Thanking Your Honor for his kind attention, I am.

Very truly yours,

PATTISON, SAMPSON, GINSBERG & GRIFFIN, PLLC



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DJS/may
Enc.

cc: Via Mail
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